

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 29, 1999
at 3:30 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 276, 1/29/1999; SB 249,
1/29/1999
Executive Action: None

HEARING ON SB 276

Sponsor: SENATOR DALE BERRY, SD 30, HAMILTON

Proponents:

Ric Brown, General Manager, Ravalli County Electric Coop
Doug Hardy, General Manager, Park Electric Coop
Gary Willis, Montana Power Company
Mark Reller, GPS Contractor
Bud Clinch, Director, Department of Natural Resources & Conservation
Van Jamison, Missoula Electric Coop
Mike Strand, Executive Vice President and General Counsel, Montana Independent Telecommunication Systems

Opponents: None.

Opening Statement by Sponsor:

SENATOR DALE BERRY, SD 30, HAMILTON, handed out amendments for **SB 276. EXHIBIT(nas23a01)** He stated he was carrying **SB 276** on behalf of the electric co-ops. They are asking to use new devices like the **Global Position System (GPS)** when they are creating easements across state land. In areas where there may be one surveyor in two or three counties they are behind six months or longer. This will enable them to expedite this process and should be able to do on short notice. The process will be handled by a registered surveyor or an engineer. The technology must be certified to be accurate within 5 meters. The Board can require a more accurate survey if there is something significant to a particular parcel of land. It must tie to a section corner or a quarter section pin and must be tied into a past survey. The first amendment was drafted stating "data collected through the use of alternative survey methods" to broaden the scope and include other means of technology available in addition to Global Position System.

Proponents' Testimony:

Ric Brown, General Manager, Ravalli County Electric Co-op, spoke in support of **SB 276** allowing the new technologies to establish right-of-ways across state ground. They believe this will speed up the process. Currently some time frames run from four to ten months to get a survey done. It is almost impossible for their members to appreciate that if they are trying to get a stock well or something out there. It will also get checks back to the state coffers more quickly. Appreciate the committee's consideration of the bill.

Doug Hardy, General Manager, Park Electric Co-op, has been involved with permits on state lands over a 20 year period and he

is a proponent of **SB 276** with amendments 1-6 as **SEN. BERRY** described. It is a matter of timeliness, insures accuracy and defines so it is a matter of clarity. Where the Department needs real close accuracy, the Department can command that. Where they need it to be just close enough to describe the corridor, it allows that. The amendment clarifies they can use other technologies to gather data. It is taking them into the 21st century to be able to use what technology is available so long as they can have the accuracy statement.

Gary Willis, Montana Power Company, spoke in support of **SB 276** stating this technology is also beneficial to Montana Power Company. Global Positioning and other technology that became available recently are already being used in their gas and electric department. It saves time and money to be able to use the new technology and this allows them to do that. They are looking at other new improved technology so appreciate the bill.

Mark Reller, GPS Contractor, spoke in support of **SB 276**. He pointed out that using GSP technology allows one to collect a variety of data while in the field. That data is very quickly imported into geographical information systems while the technicians are out in the field. They can gather information on weeds and help manage other issues while out there at a very low cost and high speed.

Bud Clinch, Director, Department of Natural Resources & Conservation, spoke in support of **SB 276**. Throughout this process **DNRC** has been in communication with all the proponents and have reviewed the legislation as well as the amendments. They find it all consistent with what their duties are at the Department of State Lands management.

Van Jamison, Missoula Electric Co-op, spoke in support of **SB 276** as amended. The reasons stated by other witnesses, they also support.

Mike Strand, Executive Vice President and General Counsel, Montana Independent Telecommunication Systems, spoke in support of the bill representing telephone cooperatives and independent telephone companies. One of the advantages of the bill is that the new technology can be used during the winter. Everyone knows the construction season in Montana is rather short due to inclement weather. From the first possible day in the spring to the last possible day in the fall they are plowing fiber as fast as they possibly can. Anything that helps them do more of the preparation work during winter is something they appreciate and they support **SB 276**.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 6.9; Comments : None.}

Questions from Committee Members and Responses:

SENATOR MAHLUM, are you saying, to use your Global Position Systems, you need an established section corner. Does the section corner have to be down in the ground? **Mr. Reller** stated, to actually use the GPS you do not need the section corner. The intent here would be to tie this to other surveys so they are cross referenced. **SEN. MAHLUM** stated he knew that in some of the older sections of Montana they use rock piles for section corners. Would it be a problem to have a rock pile there instead of having pins? **Mr. Reller** stated as long as you have no coordinates of that point, it could be used to tie to an existing survey. If it is a monument of distinguishable character, then he felt it would be sufficient if the coordinates were known to tie to the new survey for the right-of-way.

SENATOR COLE questioned if there were any problems or concerns that had arisen with them being legal surveys or anything from the survey industry themselves? **SEN. BERRY** stated he had two calls from surveyors in his own area inquiring about the system. They indicated to him they now can use this technology and other survey methods, not just on state land, and they have no problems whatsoever. He thinks the co-ops were very specific in not wanting to specifically use their own engineers. They will use surveyors to certify this process and he has had only positive support for the process - they like it. **SEN. COLE** questioned if there was any problem with it being a legal survey when they get done. **SEN. BERRY** responded no.

SENATOR GROSFIELD stated he understood there was a similar bill in the House. Is that correct? **Mr. Simonich** responded yes and no. There is a bill in the House that deals with reciprocal road access across state lands. It deals specifically with the statutes that allow the Department to grant road access across state land and it has a surveying provision in it as well. This particular bill is talking about survey requirements for a specific activity on state land. The other bill talks about access across state land and there is a provision that deals with surveying as well. **SEN. GROSFIELD** questioned did not that bill deal with GPS as well? **Mr. Simonich** stated that bill references back to the same statutes and basically sets the same requirement relative to the accuracy necessary.

SENATOR COCCHIARELLA stated Environmental Quality Council had spent a lot of time on planning and one of those elements of successful planning would be to have a state mapping system and better GIS system. Will this bill help them with that cost? **Mr. Clinch** responded he did not feel it would necessarily help with the cost but there is the potential in the long run to become co-ordinated. There is a proposal within the budget of DNRC that calls for the development of an improved data base in the GIS system that would help co-ordinate all of the various data they have about state lands with all the other agencies. What is most important for the committee to remember and what they are really establishing is the level of accuracy that is necessary for the location or issuance of an easement across state land. They are just trying to modify the statute that reflects the modern methodology available to achieve this goal. Historically, a survey consisted of ground operations and a transit and now we are in an entirely different era and the statute needs to be updated to reflect there are other methodologies to better give us the data we need.

SENATOR GROSFIELD said he understood you could buy GPS instruments anywhere from \$170 up to about \$20,000. Survey grade instruments are probably at least \$5,000 each. With a \$170 model you are not going to get accuracy near 5 meters. The point where you access onto a state section and the point where you leave that section might be very important to be right on the nose. This bill does not really talk about that. It says you have to tie to a section corner but it does not really say how you tie it and how accurate you have to be at the point of crossing. If you are talking about a private road across state land, conceivably on the adjacent section, you could have a property division that is not the location of the road. If you were hired to do these, how would you read this in terms of how close you would have to be at those two points where you cross into and where you leave the state land? **Mark Reller** stated **SEN. GROSFIELD** was fairly close on the cost of equipment and accurate in stating the hand held units that the typical hunter or hiker may use are certainly not within this tolerance range, they are probably within 100 meters circle of accuracy. The types of equipment used would not be survey grade equipment, it would mapping grade equipment. They are capable of accuracies of sub-meter accuracy. The issue becomes how to tie that into an existing section corner. The tie into the corner is a relative way to overlay this in a GIS system where you have an established, accurate survey or plat. This allows, in that graphic environment, to shift that information into that map and see whether it was relatively accurate compared to that existing plat. **SEN. GROSFIELD** stated due to various weather conditions, it was his understanding, that taking the same reading a few days later may not put you in the same spot.

Mark Reller stated a satellite configuration may be different. That index is called **PDOP** or **Precision Dilution of Position** and as long as you stay within certain guidelines of signal strength and **PDOPS** and multi-path environment means you are not close to objects reflecting the satellite. If you take due diligence and care you should be able to stay within that sub-meter accuracy.

Closing by Sponsor:

SENATOR BERRY said he believed when you enter private property, the relative easement process would identify the location on that side. Thank you for a good hearing and he urged a positive response on the bill.

{Tape : 1; Side : A; Approx. Time Counter : 6.9 - 17.5; Comments : None.}

HEARING ON SB 249

Sponsor: SENATOR TOM KEATING, SD 5, BILLINGS

Proponents:

Jim Mockler, Executive Director, Montana Coal Council
Mike Rao, Chancellor, MSU - Northern
Gail Abercromby, Executive Director, Montana Oil & Gas Assoc.
Jerome Anderson, Helena Attorney, Shell Oil Company
Jill Andrews, Montana Mining Association
Don Allen, Western Environmental Trade Association
Tom Daubert, Montana Association of Oil, Gas & Coal Counties
Patrick Montalban, Northern Montana Oil & Gas Association
Cathy Conover, Montana State University
John Augustine, Conoco

Opponents:

Anne Hedges, Montana Environmental Information Center
Tom Patton, Montana Bureau of Mines & Geology

Opening Statement by Sponsor:

SENATOR TOM KEATING, SD 5, BILLINGS, referred to the handouts he had passed out stating they would be a helpful guide to what **SB 249** is all about. **EXHIBIT(nas23a02)** and **EXHIBIT(nas23a03)** **SB 249** is a repealer of the Resource Indemnity Trust Fund (RIT) tax assessed on oil, gas, coal and some minerals. The tax is .5 of 1% of the gross proceeds of those minerals which has been put in the Resource Indemnity Trust Fund. The fund was required to reach \$100 million.

At this point it is around \$96 - \$97 million. The bulk of the payment into the RIT Trust Fund has been from oil, gas and coal which is a major portion of the \$96 - \$97 million. When the fund reaches \$100 million, the Governor, through an executive order, will declare the fund has exceeded its constitutional requirement of \$100 million and thereafter the tax is repealed and there is no more tax money flowing into the trust fund. The fund will never go below \$100 million because it is inviable and no one will be able to take any money out of it. The tax will continue up until January 1 of the year following the year the tax reaches \$100 million. The tax has always been known as the Montana Resource Indemnity Trust and in 1991 it added "and Groundwater Assessment Act". They changed the Act, that is still the RIT fund, and the Groundwater Assessment program will receive its money not from the tax but from the interest income from the trust itself. He is suggesting that the tax is not needed anymore as the obligation has been fulfilled at \$100 million and the royalty owners, the operators and coal people who have been paying the tax all this time, ought to be afforded some relief from that tax and the best relief is to repeal it.

{Tape : 1; Side : A; Approx. Time Counter : 17.5 - 40; Comments : None.}

Proponents' Testimony:

Jim Mockler, Executive Director, Montana Coal Council, stated the tax in the Constitution and statute is set at \$100 million. There has been great debate in the past as to whether the intent of that tax was to expire when it got to \$100 million or whether the \$100 million was just there. He felt that when the tax was created in about 1973, they would not have chosen to put in the Constitution that it would be capped at \$100 million unless they intended for the tax to expire when it reached \$100 million. That is what they told the minerals industry at that time. The interest income would be used to reclaim the old sites that have been abandoned.

In 1977 Congress passed a Surface Mining Reclamation and Control Act (SMRCA). SMRCA charges .35 per ton on all coal mines which goes back to the federal government. That amounts to a little over \$14 million a year that they pay. It is mandated that at least one-half of that is to come back to the State of Montana for reclamation of abandoned mines. There was not any abandoned coal mine lands with the exception of a little around Great Falls and around Coal Strip. It took about one year to reclaim those to an acceptable standard. That money has gone into the various programs that were originally intended to be covered by the RIT program, i.e. to reclaim old hard rock sites. They support programs like the Groundwater Assessment Program. They do feel they have paid

their fair share, however, and they are paying a little bit more than was ever intended by the original part of this act. They encourage a DO PASS. It is not the largest tax we pay but every little bit helps.

Mike Rao, Chancellor, MSU - Northern, stated the bill as currently written provides for \$240,000 annually for Montana State University - Northern from the Renewable Resource Grant & Loan program state special revenue account. These dollars directly affect water quality education and research. Currently they are working toward expansion in their research agenda using the same number of dollars. They hope to work closely with the oil and gas industry to explore a more focused agenda that might be of interest to these communities for research. Allowing this fund to reach \$100 million will be critical for MSU - Northern water quality education and water quality research. They very much appreciate the provision in the bill for Northern's continued and growing relationship with the Renewable Resource Grant program and they welcome guidance from this committee and the oil and natural gas communities on a more focused research agenda.

Gail Abercromby, Executive Director, Montana Oil & Gas Association, stated the RIT fund has been pitting one segment of Montana's economy against the other. There are three players including the payers of the tax, the bestowers of the tax and the receivers of the tax. The payers of the tax are primarily coal, oil and gas. The receivers of the interest from the tax are constituents of the committee members including ranchers, farmers, irrigators, and conservation districts. The tax we are paying in is going to these good programs but as we keep paying tax, we want to come to a point where we can say here is the \$100 million and here is the interest. We need some for plugging abandoned old wells. The interest from the fund is adequate for all the water projects as well as our needs. Capping the fund would stop the argument as long as there is a statutory priority grant of \$600,000 per biennium. If that is kept and we can do the plugging, the rest can go to the worthy causes within the ranching community. She would like to stop the pitting of the payer against the recipient of the funds. She encouraged DO PASS on capping this fund.

Jerome Anderson, Helena Attorney representing Shell Oil Company, stated Shell was the largest producer of crude oil in Montana. They produce between 30-40% of the crude oil thus they pay 30-40% of the tax amount that goes in from the industry into the RIT fund. This debate has gone on for many years and they have had a great deal of difficulty with the concept for some of the uses of the money that goes through this fund. It has been used for many things other than water. The time has come when the fund is

reaching the constitutional limit of \$100 million and they support **SEN. KEATING's** bill.

Jill Andrews, Montana Mining Association, stated her members produce sapphires, garnets, copper, gold, silver, platinum, lead, talc and lime. She spoke in support of **SB 249**. They feel the funds which have been collected from the extractive industry should be used to improve the environment and resolve historic problems created by the industry that paid the tax. They believe they have paid enough. She represents an industry that is struggling to stay alive and anything the committee can do help is much appreciated.

Don Allen, Western Environmental Trade Association, spoke in support of **SB 249**. The prior proponents have given ample reasons for passage of this bill and we are in concurrence.

Tom Daubert, Montana Association of Oil, Gas & Coal Counties, stated there are 33 counties in the state that derive revenue from these extraction industries. His clients are the county commissioners of all those counties. Those commissioners share the same values of the committee and understand the needs of their constituents who have benefitted from various ways the RIT monies have been used in the past. The counties feel very strongly that the purpose of the RIT tax and the fund itself has been increasingly misused. The tax was created for a purpose and that purpose should be honored. Last fall the counties in this association voted unanimously to support any legislation that would revert us back to the true original purpose of the tax itself. For that reason we support **SB 249**.

Patrick Montalban, Northern Montana Oil & Gas Association, stated he has a hard time with this tax because there are several small independents in northern Montana. Twenty-three years ago they all agreed to pay this tax and thought it was a good idea. It was meant to go out to reclaim oil and gas drilling sites and reclaim great damage incurred on mining sites. It is not very often when the small independents take .5 of 1% and use that to support something within their state. They thought it was a good tax that would be used for what it was meant for. Now the amount of money is going to reach \$100 million and it was pretty clear in 1991 that the people in the legislative process wanted to start skimming the money off the trust fund, spending the money so it would not reach the magical \$100 million. This is wrong. There is nothing wrong with spending the interest of approximately \$7-10 million per year. To go into the fund and get into the principle of the fund is absolutely wrong. They strongly support **SB 249** and thank **SEN. KEATING** for carrying the bill.

Cathy Conover, Montana State University, spoke in support of **SB 249**. They are concerned about the impact on the funding that is provided in this bill for MSU-Northern. As they researched the fiscal note, they were advised even though the fiscal note indicates there would be a negative impact on MSU-Northern, that was a mistake. There would not be a negative impact on Northern with this bill. She wanted to clarify, their primary concern is that funding would continue at the \$240,000 level.

John Augustine, Conoco, submitted a letter supporting **SB 249** in his absence per **EXHIBIT (nas23a04)**.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 15.5; Comments : None.}

Opponents' Testimony:

Anne Hedges, Montana Environmental Information Center, spoke in opposition of **SB 249** due to page 14 of the bill. She wanted to remind the committee about a bill that went through last session that was in regard to the State Super Fund program. That bill was a result of a two year consensus process between herself and public interest groups. They tried to settle that process the long running dispute over how to deal with State Super Fund sites that orphan shares, which means there is no one liable for the portion of cleanup at that site. They developed the allocation scheme and came up with a small pot of money to clean up those sites. It was estimated, in that process, there were 70 sites that had orphan shares. For 39 of those sites there was adequate information to guesstimate how much money was needed or an orphan share to clean up those sites. It was estimated they needed \$42-48 million to clean up the orphan share at those sites. That is a lot of money. **SEN. KEATING** says there is \$1.2 million left in that orphan share account that is a rollover but that is a drop in the bucket compared to how much money is needed. They believe it is an excellent program and strongly support the program. If the money is taken away through this bill, 50% of the funding that goes into the account will be lost.

Tom Patton, Montana Bureau of Mines & Geology, stated he was the program manager for the Groundwater Assessment Program. They are not necessarily an opponent or proponent of the bill but are concerned because in two years, if this bill passes in conjunction with SB 49, 50% of the funding available for the Groundwater Assessment Program would disappear. He requested the committee consider this in the judgement on the bill.

Questions from Committee Members and Responses:

SENATOR COLE questioned the feeling of the effects of the coal industry if the RIT was capped? **Jim Mockler** responded any tax is a cost of doing business. If the tax is lowered and it saves our industry \$1 million, it is a \$1 million less we can bid on the next ton of coal. We hope it will bring us some business. It will send a message that the State of Montana is living up to what they said they would do regarding tax policies.

SENATOR GROSFIELD questioned how this bill works regarding the loss of half of the funds to the orphan share and the groundwater assessment program? Are they actually losing half of the funding or not and where is that? **John Tubbs, DNRC**, stated it is true they will be losing the funding. **SEN. KEATING** presented information on the basis of **SB 49** passing. If it were law, under that bill the Groundwater Assessment Program, operated by the Montana Bureau of Mines and Geology, receives \$300,000 per year in interest funds which will not be affected. They also receive \$300,000 in RIGWA taxes. Essentially a 50% reduction of revenue. To the orphan share account, under **SB 49** as it was amended, it is estimated in the biennium they will receive \$925,000 in RIGWA taxes that were deposited into that account and \$1 million in metal mines tax. Again approximately a 50% reduction in revenue. He stated it affects it in the bill as a repealer on page 18, Line 30.

SENATOR GROSFIELD said the fiscal note talks about reaching \$100 million in FY 2004, **SEN. KEATING** said in his comments FY 2002. What is your guess, and if we had not started the groundwater program in 1991, when would we have reached the \$100 million? **John Tubbs, DNRC**, responded, when **SEN. KEATING** is referring to reaching the \$100 million in FY 2002, it again presumes the passage of **SB 49** which increases the amount of deposit. Under current law, it would take a little longer. I think the fiscal note is accurate and I think **SEN. KEATING**'s testimony is accurate. 14.1% was diverted in 1991 and in 1993 an additional 40% was diverted for uses in the state's special revenue account funding essentially state agencies. If those two events would not have occurred, we would have already reached the \$100 million.

SENATOR GROSFIELD stated he thought the main purpose of the bill was to get rid of the tax. Much of the testimony went to a little different issue which is the money has not been spent according to the original constitutional intent. The money has been diverted and used for other things. The bill does not really address that issue does it? It just says we are going to end the tax and that is it? **SEN. KEATING** responded yes. **SEN. GROSFIELD** then asked what about the hit on the orphan share and groundwater? **SEN. KEATING** prefaced his remarks by his standard principle of taxation that the taxpayer should receive a service for the taxes they pay. In 1991 the oil, gas & coal tax that was flowing into the fund was diverted

from the fund by sending the tax proceeds to the groundwater assessment program. The Groundwater Assessment Program benefits subdividers, water well drillers, the Water Resource Division in DNRC, and agriculture uses it some. There are people not paying the tax who are benefitting from the tax itself. The purpose of the fund was to generate income to be used for all of those things. Had they been awarded or appropriated money from the interest income from the fund there would be no problem. Taking money from one group of people paying the tax and giving it for the benefit of other people is their objection to the diversion of the tax. It is the same thing with the Orphan Share account. The oil, gas and coal people did not cause that damage to the environment and yet their tax is going to clean up someone else's mess. They have an argument with that.

SENATOR GROSFIELD asked if **Mr. Anderson** remembered any discussions about this being just a 23 year tax or not? **Jerome Anderson** said at the point in time the tax came into being he was not representing the oil and gas industry. He does not remember anything about it.

SENATOR COCCHIARELLA stated she understands the concept of indemnity, indemnifying the people, insurance for protection against possible future damage. One of the ways to do that is through bonding. If we were to get rid of this tax, is it likely or would oil and gas boards be willing to increase the bonds to make sure future damage and future reclamation actually did happen out of that bonding? **Gail Abercromby** stated that bonding has been raised within the last six months for oil and gas wells. That issue was addressed working with both the small operators up in the North and the deep hole operators in the eastern part of the state. The bonds are sufficient for the plugging, however, there is an asset there that is producing income and when we talk about bonding a particular well, there is a plugging requirement overseen by the Board of Oil and Gas. If an operator were to leave or abandon there would be a liability to the Board of Oil and Gas and that is where they have some recourse to this particular fund.

SEN. COCCHIARELLA questioned if the Montana Oil & Gas Association supported the Orphan Share legislation? **Gail Abercromby** answered yes.

SEN. COCCHIARELLA questioned if this bill were to pass and if there were a large suit in progress, is it possible there would not be enough funding from the orphan share to do what had to be done related to clean up of damages? How long would it take to accumulate enough interest to do what needs to be done? **John Tubbs, DNRC**, said the whole concept of the orphan share program was to do two things - to ensure the cleanup happens and not slow it

down. If you are responsible for 100% of the cost, you may not have the assets to move forward and fight. The concept was that the person who was deemed responsible for the cleanup, whether it be an owner or current operator, be done through enforcement by DEQ. With enforcement, the operator would do the clean up at his own expense and then submit a cost for reimbursement to the state agency for the contamination cost by others who are no longer in existence. They cannot be in a judicial hearing, subject to paying their share of the cost, if they caused the contamination. If they are not around, no one can recover from them. You can still get the site cleaned up and then the state gets a bill. The orphan share account was set up to pay those bills. You may still see cleanup occurring on these sites if there is no money in the orphan share account and this does impact 50% of the revenue we talked about earlier. The problem is the person who is going to spend the money, if he knows there are no dollars in the account, also understands he will not be reimbursed. Ultimately the main concern is if there is no money in the account then there is not going to be any incentive to clean up the project from the hole.

SENATOR GROSFIELD asked if we pass this bill, but we left the orphan share account whole and/or the groundwater program, how can we shuffle the interest around to accomplish that assuming that **SB 49** passes? **John Tubbs** stated **SB 49** is essentially a road map for how to do this. One of the nice things about **SB 49** is it was linked with another bill that did not have any General Fund impact. The fundamental problem with **SB 49** is it sets up the future legislature with a big black hole. In **SB 49** the state administrative cost of agencies was moved out of being funded from RIT revenues and into the General Fund. We could not go any farther because there was not the revenue to do it. To fix this problem, you have to move appropriations, the key ones being the state agency appropriations for budget, out of this account into the General Fund where often times they should be. There they are reviewed in HB 2. If that were able to be done it would free up enough interest money to fund all these other purposes, but this bill does not do that. It just takes the revenues out. Without action with the partners downstairs in the appropriations process of shifting those over and creating a space for this tax to be removed, the next legislature will have to answer that question.

{Tape : 1; Side : B; Approx. Time Counter : 15.5 - 43; Comments : None.}

Closing by Sponsor:

SENATOR KEATING stated he would like to address the orphan share account. Looking at the appropriation sheet he handed out, the \$1.3 million bracketed in the right column was appropriated for

this biennium. The report he received from the LFA just last week was that \$1.2 million of that remains unspent and there is no place to spend it because they have not settled the suits on the orphan share accounts. One orphan share account that was a priority has been taken off the list. The legal time that goes into determining the orphan share spots and the orphan share the state is going to pick up out of the fund takes a long time. There is plenty of money in the orphan share account to take care of those things. Most of those refinery sites are from activities in the '20s and '30s and '40s. After 1956, the refineries in this state were cut by 75%. Most of these refineries that were abandoned or went out of business did so before the 1950's or early 1950's. There is not an urgency to clean these up because they have been there for 40 years and will get cleaned up eventually.

He reiterated the principle of taxation is that the taxpayer ought to get a service for the taxes that they pay. He takes exception to the Montana Environmental Information Center who has not contributed a dime of tax toward the orphan share. What standing do they have in the community? If they paid some the of the tax he would go along with them but they are not paying any tax and they expect to take that tax out of somebody else's property for their particular purpose. He finds that troublesome.

In looking at the funding sheet he noted under FY 2000, the RIT tax revenues equal \$1.2 million. That is 50% of the actual tax. The flow chart shows that 50% of that tax or \$1.2 million is flowing into the trust fund, which means there is \$1.2 million of tax with \$600,000 going to groundwater assessment program. That is one-half of the 50% remaining. The orphan share gets 50% of the balance which is half of 25% so they get \$300,000 into the orphan share and another \$300,000 goes into the reclamation and development account at the bottom of the list. \$1.2 million of the tax will be paid for the next three years or until the fund reaches \$100 million. Interest rates have bottomed and the cycle is working the other way. We are going to see higher interest rates in the next two or three years. The Board of Investments has averaged about 11-12% interest a year on their investments. If the \$100 million of invested trust fund money returns 10% per year, there is the potential for \$10 million a year or \$20 million of interest income at the time the fund reaches \$100 million. Right now it is \$15 million so there would be \$5 million more in interest income if we follow all these figures. That would more than fund the orphan share, the groundwater assessment program and MSU-Northern. Considering the growth of the fund, which will continue for three more years or until it reaches \$100 million, interest income is going to increase if the interest rates go up. The proceeds are going to go up accordingly so the investment portion will increase, that means the return will increase. There is money coming from

interest income that can be appropriated to all these other possibilities.

They are asking for relief. He thinks they have paid their fair share. The groundwater assessment program can stay in business for awhile longer and maybe they can find a source of revenue for by charging fees for their service. Let the people who use the service pay some tax for it. In lieu of that, they can have all the interest income they can scrounge out of the legislature. There is plenty of money there and he thinks the taxpayers are due some relief.

In 1981, the oil and gas industry in this state was producing 32 million barrels of oil per year and in that year they paid \$50 million in taxes to the state and he was not sure how many millions were paid to the counties. The tax was tripled in 1981, it went from 2.65% on state severance to 6%. It was later reduced to 5%. The tax from the counties local government severance tax was around 3% of the gross proceeds until the local government severance tax was passed in lieu of raising the mills and that was put at 7%. Now oil and gas is paying 12% - 5% to the state and 7% to the counties and schools, etc. Since that time, because we are the highest taxing state in the nation, we have seen a decline in exploration. The rigs have moved out. There is not that much drilling activity. As a consequence, we are not replacing the reservoirs that are being drained and as of this year, we are producing less than 16 million barrels a year. You have lost one-half of the tax base and in the meantime, the price has dropped from \$20 per barrel to \$6 and \$7 a barrel in parts of the state with the average below \$10 a barrel. Not only is half the tax base lost, half the value is lost as well. There is a shortfall in taxation from oil and gas and that is reflected throughout the total budget. .5 of 1% is not going to attract a lot of exploration but it would sure help the people who are paying that tax out there right now.

He hopes the committee will keep the citizens of Montana in mind when you DO PASS **SB 249**.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 9; Comments : None.}

ADJOURNMENT

Adjournment: 5:10 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas23aad)